



EQUAL JUSTICE

Through awareness, education and action

"Judges Speak"

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Interpreting in the Courts

Ms. Mary Marti
Certified Court Interpreter

The Court Interpreter Certification Program in the State of Washington has come a long way since 1990, when the first certification was granted. Due to its level of professionalism and high standards, it has now become a national model which other states

follow and has filled all of us in the profession with great pride.

Very strict requirements must be met to become a certified court interpreter. First, the prospective interpreter must take a written exam in the language for which he/she wants to be certified. If the applicant passes the written exam, then he/she must submit to a comprehensive oral exam. It is only when the applicant passes these two exams that he/she can obtain certification status from the Administrative Office of the Courts. Once certification is attained, it must be maintained by completing 16 hours of approved continuing education courses every two years.

The main purpose of providing interpreters in the legal system is to provide equal access to justice under the law to all court participants who do not speak or understand English. This equality is vital to our system of due process; the interpreter becomes the voice for those unable to speak for themselves. Some may assume that interpreters only work with criminal defendants. While this is a large portion of interpreters' work, it does not represent the total picture. For example, the State often uses interpreters to communicate with non-English speaking victims of crime. It is not uncommon in a criminal trial to see different interpreters appointed to different non-English speakers (and this is the way interpreters should be used): one for the defendant, one for the victim and one (or more) for the witnesses. The numbers are often compounded in a co-defendant trial, where each defendant is entitled to a separate interpreter.

Given the recent immigration explosion in our country, interpreters are now used in a wide variety of proceedings. For example, they are used in civil no-contact and anti-harassment hearings, in which the all too often pro-se petitioner seeks protection from domestic violence. Interpreters are also used extensively in juvenile court. This can include both interpretation for youth accused of committing a crime and interpretation for immigrant parents in civil child dependency hearings. Interpreters are also used widely in dissolution proceedings, child custody hearings, adoptions, as well as to translate legal documents from other countries. Indeed, interpreters are even called in to court to interpret weddings!

It is apparent that interpreters are here to stay. They perform a vital and necessary service in our legal system. Often, they are the only nexus between two languages, two cultures, and two different judicial systems which must come face-to-face in a court of law.

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Justice Charles Z. Smith
Judge Ronald E. Cox
Judge James M. Murphy

CORRECTION

In the August 2002 issue of Tribal Justice, Justice Susan Owens' last name was inadvertently spelled "Owen." We apologize for the error.

EQUAL JUSTICE

Equal Justice is the official publication of the Washington State Minority and Justice Commission whose goal is elimination of racial and ethnic bias, where it exists, from our state courts. The newsletter is a communications and networking tool providing information about programs, projects and issues of concern.

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Message from the Editor

Ms. Erica S. Chung

The original intent of "Judges Speak" was to produce a newsletter featuring judges' perspectives on issues of cultural diversity in the courtroom from trial courts of general and limited jurisdiction. The Outreach sub-committee concluded that trial court judges are in a unique position to confront issues of cultural diversity in the courtroom and have the authority to implement change. Hence, their observations and experiences may serve to educate other judges, lawyers, court personnel, and persons who work to promote equal justice.

In an effort to solicit articles from judges, a letter was mailed to trial and tribal court judges in the State of Washington asking for their observations of some difficulties encountered in their courtrooms, some practices implemented in their courts, or simply sharing their thoughts.

We received an array of articles. However, to our surprise, one theme was highlighted numerous times in the submissions: the lack of and the need for more certified court interpreters and the potential impact on equal access and equal justice for limited and non-English proficient litigants. Based on the responses received, the Outreach sub-committee expanded its original goal and decided to solicit and incorporate articles related to interpreter issues, including an article from Judge Ron A. Mamiya, who was integral in the state court certification program, and articles from court certified interpreters, who have direct knowledge and experience, for their perspective on the certification process.

Although the newsletter did not develop as originally intended, we still believe the newsletter as a whole serves to share judges' observations and experiences and further our understanding of the justice system.

The Outreach sub-committee greatly thanks those judges who responded to Justice Charles Z. Smith's letter requesting submission and wish our readers a safe and joyous holiday season.

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Lack of Skilled Certified Court Interpreters

Judge Ernest Heller
Lakewood Municipal Court

In my career as a judge and administrative law judge (since 1975), I have found that the single most prejudicial feature of our justice system is the lack of skilled interpreters. Qualified interpreters are in great demand. Many litigants and courts must struggle with delays due to this demand, or must proceed with interpreters who are less qualified.

I routinely find it necessary to postpone proceedings until an interpreter is available. It is difficult to explain to a non-English speaking party that his/her case will be rescheduled. Judges have to accept, almost as a matter of faith, that the criminal defendant is really aware of the rights which are being explained.

This is a problem that strikes hardest on Asian and Hispanic defendants. It is also a problem for parties in civil and administrative proceedings. State law mandates that an interpreter be provided, but in many cases a party will try to avoid a delay or avoid embarrassment by claiming to be able to speak and understand English. Even though the party may be able to understand and speak English in a social setting, it is another thing to understand and express one's self clearly in a legal proceeding. In legal proceedings, clear communication is critical.

I challenge the legislature and the courts to adequately fund and train interpreters. Even the most unbiased judge or administrative law judge will not be able to truly provide equal access to justice without a readily available qualified interpreter.

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Tribal Court Observations

Associate Judge Lorintha Warwick
Puyallup Tribal Court

As an Associate Judge for the Puyallup Tribe, I have only had a few occasions where there were indirect problems with outside jurisdictions' views of our tribal court orders, especially in the area of custody, child support, and orders of protection. There is a bias or unfamiliarity in dealing with tribal court orders by other jurisdictions.

One such instance involved a temporary order of protection from the Puyallup Tribal Court and specific language regarding the return of a child to the custodial mother who was a resident of the Puyallup Reservation. Difficulties were encountered with getting assistance from an agency of the outside jurisdiction. Remedy to this problem came through participation and communication with judges of the outside jurisdiction.

As a consequence of such problems, our tribal court orders have been designed to mirror state orders, language on orders and cover sheets so as to create familiarity and acceptance by outside agencies. However, difficulties encountered in the honoring of tribal court orders by outside jurisdictions remains a problem.

Local civil traffic citations are often turned over to tribal courts for adjudication and this is a plus for tribal courts.

In my personal observations, the Washington State Courts are increasing their cultural diversity

efforts for judges and court staff by providing cultural diversity education training on tribal courts and cultural competency because of an increase in diverse court users and their impact on court operations.

At the tribal level within my court, there is more cultural competency of client population, especially in civil traffic. I have performed marriages of peoples of diverse cultures and languages. I have presided over cases of diverse populations as well.

The only other observation that is worthy of sharing with other judicial staff is my observation regarding the assumption of western and European values being the best values to solve problems judicially. The other concern is the assumption that state rights should prevail over tribal government rights and treaties. There is a definite value conflict. While tribal governments and courts recognize the state paradigm of dual sovereignty with the federal government, the states must realize the tribal paradigm differs from the state paradigm.

Specifically, the tribal paradigm is the use of traditional courts and western style tribal courts. Milton Nomee, a peace maker judge of the Kalispell Tribe, shares that the Peacemaker process is used as a way for the tribe and its members to deal with legal matters, such as civil actions and non-serious matters, that can be dealt with as a case utilizing the traditions of that tribe. In this way the Traditional Court, i.e. Peacemaker court, can use its discretion in resolving a legal matter without infringing on the civil rights of the parties.

As a matter of principal and in honor of tradition, the tribal judge and/or Peacemakers who preside over a Traditional Court should not have free rein to do whatever they want and call it traditional.

Peacemaker Nomee further elucidates that tribal courts should be bound by the tribe's law and order code and the custom and tradition of the tribe, being mindful not to infringe on the civil rights of the people it serves. (Nomee, March 2002)

The shackles of "being a dependent sovereign" should be removed as tribal courts employ college trained and cultural and tradition based judges presiding in tribal courts. Judges, court staff, and legal professions should remember that even early United States Supreme Court judges during the first 100 years of United States government saw judges sitting without benefit of a college education.

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Equal Access to Justice: Certified Court Interpreting in Washington

Judge Ron A. Mamiya
King County Municipal Court

Consider this:

- Nearly one out of every seven Americans over the age of five does not use English as a primary language.
- Of those 32 million persons, nearly half speak English "less than 'very well.'"
- Because of our geographic location, Washington proportionately has even greater numbers of non-English speaking persons.
- Washington's non-English population has increased by more than 10% over the past 10 years.

In 1988, the Washington State Supreme Court's Minority and Justice Task Force held public forums around our state to determine public concerns about our judicial system. The most common concern by ethnic community members, legal professionals and the public at large related to access to justice – the inability to communicate in English and fully participate in judicial proceedings.

The truth is that when a non-English speaking person is involved in a court proceeding, no one other than a competent interpreter knows everything that is being said. And, since most of us are not bilingual, few are equipped to evaluate language skills. Consequently, there is very little case law and, until recently, few guidelines to assist us.

In 1986, our State Supreme Court created the Court Interpreter Task Force. Since that time, the state legislature has enacted two statutes, Revised Code of Washington (RCW) 2.42, Interpreters for Hearing Impaired Persons, and RCW 2.43, Interpreters for Non-English Speaking Persons, requiring appointment of "qualified" interpreters in all court proceedings. Despite minor differences in the two statutes, the legislative mandate is clear:

It is hereby declared to be the policy of this State . . . to secure the rights of persons who . . . are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

In addition, our state Supreme Court adopted court General Rule (GR) 11.1, A Code of Conduct for Court Interpreters, in 1989, and GR 11.2, Telephonic Interpretation, in 1994.

Since 1990, our state Administrative Office of the Courts (AOC) has certified more than 250 language interpreters statewide in seven languages – Spanish, Vietnamese, Cambodian, Lao, Korean, Cantonese and, most recently, Russian.

Washington State's court interpreter program is nationally recognized, and is a guiding force for the National Center for State Courts' (NCSC) Interpreter Consortium. Based largely upon the testing and educational programs developed in Washington, the NCSC Interpreter Consortium, over the past seven years, has developed court interpreter certification and education programs now available to its twenty-nine member states.

In March 2002, Supreme Court Justices Charles Z. Smith and Charles W. Johnson, co-chairs of our state's Minority and Justice Commission (formerly the Minority and Justice Task Force), asked members of the state's judiciary for comments concerning their observations and experiences relating to ethnicity and culture in their courts. Overwhelmingly, the responses again reflected concerns about interpreters, ranging from availability to competency. Although we now have a framework, fourteen years later we are still struggling with equal and effective access for the non-English speaking.

Where do we go from here? Two hundred fifty certified interpreters in seven languages are still not enough – just ask any judge. We have come a long way, but there is so much more to do. First, all of us involved in our judicial process must be proactive in soliciting help from the ethnic and cultural communities. In many cultures, the unwillingness to participate in court proceedings is a direct result of distrust of government and/or fear of authority. It is up to us to reach into those communities and promote court interpreting as a worthy profession.

Second, once individuals step forward as interpreters, we must treat them with the respect that they are due – as "officers of the court." Far too often, an interpreter is viewed as a nuisance rather than a necessity. We must also be aware of the interpreter's needs, allowing them to do a more effective job. It is difficult, demanding, and requires highly specialized skills that few possess and even fewer are capable of developing to a competent level.

Third, we must educate ourselves, as well as interpreters, about the importance of interpreting, acceptable performance standards, and the effective utilization of interpreter services. In addition, interpreter education must be provided to ensure that appropriate competency levels are reached and maintained.

Lastly, we must vow that equal access is provided at all stages of the proceedings. It goes beyond just being in court and must include the entire continuum – from the reporting of an incident through availability of probationary and social services. Imagine not being able to tell the police how you were assaulted or who did it or a Vietnamese defendant going to prison because a drug diversion program is not available in Vietnamese.

Thankfully, technology provides us great access. Washington's AOC interpreter website courts.wa.gov/programs/interpret contains wonderful information on court interpreting, including certified interpreters by language and locale with contact information. Additionally, the NCSC provides an on-line library, links to other states with court interpreting programs and helpful materials for both the interpreter and user through its website www.ncsc.dni.us/research/interp.

As time-consuming and resource intensive as interpreting may be, we must demand recognition that the ability to effectively communicate in court is a fundamental and basic right of all persons. Without competent interpretation, participation in our legal process is meaningless; it is the same as being unable to hear or speak. This is not an issue of providing more resources or special treatment – it is placing the non-English speaking person on equal footing with an English speaking person – nothing more, nothing less. These priorities must first be instilled in our judiciary; if we educate our judges, the rest will follow.

It is up to us to make sure that our courts provide a "level playing field" and...Equal Justice for All.

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Minority/Cultural Efforts in Kitsap County

Judge Marilyn G. Paja
Kitsap County District Court
and
Dayle Crane
Director of Probation Services

In 2001, Kitsap County District Court Probation Services began to address issues of culture with Hispanic offenders by implementing specific program tracks. We are fortunate to have a Hispanic person on staff in the probation department who agreed to accept the majority of our Hispanic offenders. She has translated many court forms and informational brochures into Spanish, including a safety plan for domestic violence victims. She has also developed an informational program in Spanish that addresses elementary information on alcohol/drug use and domestic violence. This program is facilitated in small groups of four or five and

often includes video material intended for Spanish speaking audiences. We have opened this resource to the municipal courts in Kitsap County who wish to refer offenders.

We have found that both driving under the influence and domestic violence issues have distinct cultural overlays that must be addressed before traditional treatment can be implemented. This informational program has been expanded to include significant family members of the offender, recognizing that family and community is an important part of Hispanic culture. Our Hispanic probation officer also partners with the community to provide culturally relevant training to Court Appointed Special Advocate volunteers and Domestic Violence Victim Advocates through training offered at the Young Women Christian Association (YWCA).

The District Court Probation Department is a partner with the Health District in the development and support of "El Centro de la Familia." This non-profit service began in 2001 and provides a wide variety of health education and community resource information in Spanish. It also provides a clothes closet and food bank. Many of the users are female victims of domestic violence and are also immigrants. Most have dependent children.

Kitsap County has few services for our growing Hispanic community and that which has existed has been fragmented. Two years ago, the District Court Probation Department coordinated a Minority Services Committee to address this coordination issue. This group now meets regularly to share service information and resources. They also serve as mentors for each other as new services are developed and promoted. This is a wide based group with representatives from: probation, law enforcement, treatment, military, prosecutors, health, faith, and social services. Some representatives attend from surrounding counties.

Little new money has been used to create these services with the exception of county support for the bilingual skills of the probation officer. El Centro de la Familia is a grant-funded project. All other special programming in probation, community training and the Minority Services Committee has been accomplished by the reallocation of existing staff and resources.

There is still much to be done in accommodating the increasing diversity of our community. We are pleased with the progress that has been made and the community support for problem solving by government, court, and non-profit and for-profit agencies offering services to Hispanics in our community.

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Certified Court Interpreter’s Perspective

Samuel A. Mattix
Certified Court Interpreter

To prepare for the exam and to cultivate my court interpreting skills, I found it important to restudy vocabulary words and common expressions and to observe court proceedings and practice silently simultaneous court interpreting. I also asked experienced interpreters for advice for new and unfamiliar situations.

For languages such as Laotian with few available reference resources, I believe potential and practicing court interpreters may be helped greatly by revising and extending the existing Administrative Office of the Courts (AOC) English-Lao Legal Glossary. This should be done by experienced court interpreters, including native speakers of both languages working together to find and/or develop appropriate terms in the non-English language.

Also, for languages such as Laotian for which AOC has difficulty finding interpreters able to pass the certification exam, perhaps it would be helpful to implement multi-level certification, with oral exam test score standards set for each level in each interpreting skill (consecutive, simultaneous, sight translation) tested. This could provide court interpretation service administrators with information to decide whether a particular interpreter has attained the level of proficiency necessary for a given assignment.

Another way to partially remedy the lack of court certified interpreters in some languages and help improve the quality of work done by non-certified interpreters would be to translate commonly used court documents (Would county courts agree to standardize them state-wide?), including plea forms, sentencing forms, pattern for jury instructions, etc. These could be made available online as PDF files to avoid non-English script problems and be printed out by the courts as needed for interpreters to read and to adapt to the situation.

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Certified Court Interpreter Education

Ms. Cristina Perez-Lopez
Certified Court Interpreter

Certification of court interpreters has elevated interpreters to a level of professionalism and has increased their standing in the courts.

I took the exam the first year it was offered and it

was difficult to study because we had little to go on. Soon thereafter, though, better courses were designed to train candidates, which were great. The state of Washington was a pioneer in funding not only testing but training and this resulted in making us the leaders in the field. Unfortunately, the funding has been severely reduced recently.

The recruitment for testing of languages other than Spanish needs major improvement. There are very few Korean, Lao (1) and Vietnamese certified interpreters.

People don’t know how to work with interpreters and much education needs to be carried out. By the same token there is little comprehension of how the language/culture barriers affect a given group of immigrants in the court process.

Another problem is that many interpreters are either ignorant of or do not follow the Code of Ethics—a Rule formulated by the Supreme Court, and as of yet there are no disciplinary means or methods to address this problem. This is the next essential step in improving services to limited or non-English speakers.

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Training for Small Courts

Judge Linda Portnoy
Lake Forest Park Municipal Court

I preside over a small part-time court north of Seattle. We are in a city of about 15,000 people. While judges participate in diversity training and sensitivity exercises during their judicial college training and at state conferences, I do not think the "lower bench" has enough exposure to this important training. My court administrator has had diversity training in her annual conferences; however, I have part-time clerks who must run the court while the administrator is at these conferences. Even the one full-time clerk in my court rarely goes to any training that includes this topic.

I suggest the Commission think about training for full-time and part-time clerks and bailiffs, especially in small courts. I suggest the Commission think about producing written material for court staff and possibly a video. This could cover aspects of their job specific to them and not just broadly addressed to all members of the administration of justice.

I am sure if you got a group of clerks together they could tell you parts of their job that are unique in the court system. For example, I never answer phone calls from the public, they do.

I would also like to see written materials that can

form the basis of an in-house training that could be facilitated by the judge or court administrator. The hypotheticals could be based on court staff activities in and out of the court room. I have to be candid and say this is something I have wanted to do in my court now for three years but I have not figured out how to do it. Perhaps there could be regional training offered for court staff apart from the administrator and clerk conferences so that part-time staff, who have to stay and work, may attend. I would be happy to help in anyway. ???

Certified Court Interpreter Availability
Judge James Docter
Kitsap County Superior Court

Kitsap and Mason Counties have lately seen an increase in Guatemalan and Mexican individuals, some of whom find their way into courts of limited jurisdiction on misdemeanor matters. Kitsap’s criminal justice system currently has inadequate resources to accommodate the language barriers that arise; from the arresting officers to the jail staff, the lawyers, the court staff, the judge, the probation department (with one exception in District court), the treatment agencies, and collection agencies. We do not have interpreters readily available at the critical stages of the proceedings and end up having to continue cases until interpreters are available (usually coming from Seattle or Tacoma). By the time the new court date arrives the defendant often doesn’t appear. We do the best we can by consolidating hearings on a single “interpreter day”, but as the Spanish speaking population increases, so must our ability to communicate with them. ???

Observations of Yakima County Court
Judge Michael E. Schwab
Yakima County Superior Court

In Yakima County we have a very culturally diverse population and a significant low-income population. Our economic base is agricultural. My experience as a lawyer and judge for over 30 years in Yakima County has led me to the following observations:

- 1) We need to provide interpreters for anyone who is a participant in our justice system. This is a vital access to justice issue, particularly with pro se litigants.
- 2) We need to be flexible and considerate in setting court dates and proceedings for people who have limited resources, transportation problems and difficult work schedule.

3) We need to develop regular lines of communication with law enforcement, schools, social service agencies and large community groups like service clubs to promote open and positive discussions regarding diversity and access to justice issues.

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**Spotlights
of Commission
Members**



Justice Charles Z. Smith

Justice Charles Z. Smith, Washington State Supreme Court, received a Lifetime Service Award from the Washington State Bar Association on September 12, 2002 for his lifetime of service to the Washington State Bar Association and the public.

The Washington State Bar Association Governor, Zulema Hinojos-Fall, nominated Justice Smith for encouraging the recruitment of diverse law students, mentoring new lawyers of color, and providing leadership in the community. She wrote: “There ought not be any doubt that Justice Smith’s professional career has been a sterling example of his commitment to public service through the practice of law. His bio tells the tale of his lifetime of achievement, but does not begin to address the impact his example of accomplishment and professional dedication had on all of us attorneys of color.” The full text of the press release may be found at www.wsba.org/2002/09/smith.htm.

Judge Ronald E. Cox

Judge Ronald E. Cox, Court of Appeals, received the Henry M. Jackson Distinguished Alumni Public Service Award from the University of Washington Alumni Association (UWAA) on October 17, 2002. UWAA honors an alumni member who has made a great impact on the University of Washington Alumni Association and the University of Washington community.

Judge James M. Murphy

Judge James M. Murphy, Spokane County Superior Court, received the Outstanding Judge Award from the Washington State Bar Association on September 12, 2002. The award is presented annually for outstanding service to the bench and for special contribution to the legal profession. The full text of the press release may be found at www.wsba.org/2002/09/murphy.htm.

Celebrating the Courts in an Inclusive Society

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Temple of Justice
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